



**UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/378,233 08/19/99 PALMER

W 2068.001

EXAMINER

021917 IM22/0306
MCHALE & SLAVIN
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SUITE 402
PALM BEACH GARDENS FL 33410

DAHERMAN, S.

ART UNIT

PAPER NUMBER

1761

DATE MAILED:

03/06/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Advisory Action

Application No.

09/378,233

Applicant(s)

Palmer et al.

Examiner

Sherry Dauerman

Group Art Unit

1761



THE PERIOD FOR RESPONSE: [check only a) or b)]

- a) ☐ expires _____ months from the mailing date of the final rejection.
- b) ☒ expires either three months from the mailing date of the final rejection, or on the mailing date of this Advisory Action, whichever is later. In no event, however, will the statutory period for the response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

- ☐ Appellant's Brief is due two months from the date of the Notice of Appeal filed on _____ (or within any period for response set forth above, whichever is later). See 37 CFR 1.191(d) and 37 CFR 1.192(a).

Applicant's response to the final rejection, filed on Feb 13, 2001 has been considered with the following effect, but is NOT deemed to place the application in condition for allowance:

☒ The proposed amendment(s):

- ☐ will be entered upon filing of a Notice of Appeal and an Appeal Brief.

☒ will not be entered because:

- ☒ they raise new issues that would require further consideration and/or search. (See note below).
- ☐ they raise the issue of new matter. (See note below).
- ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
- ☐ they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: The proposed amendments raise the new issue of a combination of a foodstuff and a holding device, whereas the scope of the previously entered limitations of claim 1 were directed to a food stuff holding device and not a combination.

- ☐ Applicant's response has overcome the following rejection(s):

- ☐ Newly proposed or amended claims _____ would be allowable if submitted in a separate, timely filed amendment cancelling the non-allowable claims.

- ☒ The affidavit, exhibit or request for reconsideration has been considered but does NOT place the application in condition for allowance because:

See attached paper.

- ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

- ☒ For purposes of Appeal, the status of the claims is as follows (see attached written explanation, if any):

Claims allowed: None

Claims objected to: None

Claims rejected: 1, 2, and 9

- ☐ The proposed drawing correction filed on _____ ☐ has ☐ has not been approved by the Examiner.

- ☐ Note the attached Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

- ☐ Other

Art Unit: 1761


ATTACHMENT TO ADVISORY ACTION

Response to Argument

With respect to Applicant's Remarks on pages 2-4, these arguments with respect to claims 1 and 9 have been considered but are moot because they are directed to the language contained in the amendment after final which has not been entered.

With respect to Applicant's remarks on page 3, paragraph 3, wherein the Applicant distinguishes between the Merriam-Webster's Collegiate Dictionary definition of the term "altering" and the Applicant's own lexicography. The Examiner respectfully agrees that the inventor may be his own lexicographer, however the Applicant has not provided a contrary to the dictionary definition of the term "altering" within the entirety of the disclosure. Applicant's complimentary description of what is meant by the term "altering" appears on pages 7-8 of the specification. Applicant's attention is directed to item 1, lines 4-11 on page 8, wherein the simplest interpretation of the term is that "a single audio frequency tone is generated as long as the electric circuit path is completed", thus the Merriam-Webster definition on page 7, paragraph 3 of the last office action (sent out Dec. 7, 2000) still stands..

The rejection of claims 1 and 2 under 35 USC 103(a) as being unpatentable over Rudel et al. (Pat. '983) in view of McCaslin (Pat. '681) and of claim 9 in further view of Matsuyama ('652) still stands (paragraphs 7-9, last office action). Applicant's arguments filed have been fully considered but they are not persuasive.


MILTON CANO
PRIMARY EXAMINER
GAL 1761